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OKLAHOMA SUPREME COURT: THE MECHANICS OF THE DECISION-MAKERS

The progress of civilization depends upon the administration of law. Man's advance has largely depended on the enactment of a network of laws and constitutions by which man seeks to govern himself. But it is the judicial determination of law in relation to a constitution which, in the final analysis, gives direction to society.

The direction of Oklahoma society is largely shaped by the decisions of its highest constitutional court: the Oklahoma Supreme Court.¹ When this judicial body hands down a decision, it is publicized, criticized and applauded in much the same manner as any other decision by any other supreme court. The reasoning behind these decisions is published in reporter systems. But not as well known is the mechanical processes by which the justices arrive at decisions in the sedate offices of the State Capitol Building in Oklahoma City.

The Oklahoma Supreme Court was created by the Oklahoma Constitution,² adopted in 1907 at the commencement of statehood.³ At first, the Court consisted of five justices, but in 1917 the number was increased to nine.⁴ Each justice is elected on a partisan ticket and consequently must file with the State Election Board like any other political candidate. Term of office is six years. The terms are staggered, so that, ordinarily, every two years three justices are elected.⁵ After the election, at least six justices will normally have past experience on the Court. If a justice should die, resign or become unable to serve for any reason, the governor may appoint a justice to fill the vacancy until the next general election, at which time an election will be held for the unexpired term.⁶

Each justice represents a district set by the legislature,⁷ and must be a resident of that district.⁸ The qualifications for a justice are five years as a licensed attorney or judge of a court of record or a combination of both.⁹ The Chief Justice is elected by the members of the Court on the

¹ OKLA. CONST. ART. 7, §§ 1-2.

² OKLA. CONST. ART. 7, §§ 1-2.

³ BUCHANAN & DALE, A HISTORY OF OKLAHOMA (1924); HURST, IRVIN, THE 46TH STAR (1957).

⁴ OKLA. CONST. ART. 7, § 3; 20 OKLA. STAT. § 1 (1961).

⁵ 20 OKLA. STAT. § 3 (1961).

⁶ OKLA. CONST. ART. 7 § 3.

⁷ OKLA. CONST. ART. 7, § 3; 20 OKLA. STAT. § 2 (1961). This was a Session Law adopted in 1917 and has not been changed since then. Originally, the districts were probably equal in population. The legislative reapportionment decisions have not affected the Court. One theory is that the function of the justices is to determine what the law is in a given matter; so that there is not the reason for per capita representation on the Court that there is in the Legislature. But if there were a movement to reapportion the districts, the members of the Court probably would not oppose it.

⁸ OKLA. CONST. ART. 7 § 3.

⁹ OKLA. CONST. ART. 7, § 3. In addition, he must be at least 30 years old, a citizen of the United States, a resident of the state for two years, and a resident of his district for one year.

second Monday in January of each odd numbered year.¹⁰ The members meet in the conference room on this date, and in accordance with the statute, elect the Chief Justice. As a practical matter, this post is rotated among the members. The term of the Chief Justice is two years. The office of Vice Chief Justice is rotated in the same way. Normally, the Vice Chief Justice will advance to Chief Justice, unless for some reason he leaves the Court.¹¹

The Court has two areas of jurisdiction: appellate and original. Appellate jurisdiction extends to all civil cases at law and in equity, co-extensive with the state.¹² On matters that fall under original jurisdiction, the Court has the power to issue writs of Habeus Corpus, Mandamus, Certiorari, Prohibition, and such other remedial writs as may be provided by law; and may exercise such other jurisdiction as may be provided by law. This includes general supervision of all inferior courts, commissions and boards;¹³ and licensing and regulating the conduct of attorneys.¹⁴

On original matters, the appellant files an application for the court to assume jurisdiction. Under the Court's rules, the appellant is required to give notice to the opposing party when the application will be presented.¹⁵ These hearings are set on a Tuesday at 9:30 a.m., but they may be set specially, with permission of the Court. Along with the application to assume jurisdiction, the appellant's attorney files with the Marshall of the court a petition setting forth the grounds for the court to assume jurisdiction and grant relief, a brief in support of the application, often a brief on the merits of the case, and notice and proof of service to the opposing party. The appellant's attorney, acting as an officer of the court,¹⁶ then sets the time of the hearing with the Marshall. As a matter of courtesy, the pre-existing calendar schedule is taken into consideration. Usually, there is a lapse of only a few days for the opposing party to prepare his argument and brief. Consequently, briefs may be typewritten or reproduced by some method other than printing, which is the usual requirement for appellate briefs.

If the court grants the application, the Chief Justice assigns the case to one of the justices other than the one in whose district the case arose. That justice alone hears the parties. Ordinarily, the merits of the case are presented at this time. Both oral arguments and briefs are presented. The court decides what the merits are before it assumes jurisdiction.

¹⁰ OKLA. CONST. ART. 7, § 6; 20 OKLA. STAT. § 7 (1961).

¹¹ All background material for this article comes from an interview with Justice Ben T. Williams (former Chief Justice) of the Oklahoma Supreme Court on April 24, 1965 and will not be cited to further.

¹² OKLA. CONST. ART. 7, § 2. The Oklahoma Court of Criminal Appeals has exclusive jurisdiction over criminal cases. This court was established by statute in 1910. 20 OKLA. STAT. §§ 31-48 (1961).

¹³ OKLA. CONST. ART. 7, § 2.

¹⁴ 5 OKLA. STAT. §§ 12-13 (1961).

¹⁵ See 12 OKLA. STAT. CH. 15 APP., RULE 37, *Rules of the Supreme Court of Oklahoma*, adopted November 20, 1936, amended July 1, 1937, May 10, 1940, March 30, 1951, June 4, 1951; in force January 1, 1954.

¹⁶ 5 OKLA. STAT. § 2 (1961). In this regard, the Court can charge any attorney to file a brief as an Amicus Curiae or to prosecute an attorney charged with violating the Canons of Ethics.

There is a practical reason for this. The Oklahoma Constitution requires the court to render written opinions in all cases.¹⁷ If the court assumes jurisdiction and then finds that there is no merit to the case, the court will have to issue a written opinion or withdraw its order assuming jurisdiction. After the appointed justice hears both sides, he reports to the other justices on a Monday, the scheduled day for such matters. A vote is then taken on a Friday on whether to assume jurisdiction. On all matters, a majority of the members constitute a quorum, and a simple majority of the quorum shall determine any question.¹⁸

On appellate matters, the appellant gains access to the court, following statutory time and procedural requirements, by appealing on case-made, transcript, or on the original record.¹⁹ Considered on appeal are questions of jurisdiction, procedure and law. Questions of fact are only considered on appeal where the judgment of a trial court in an equity case or the ruling of an administrative agency is against the weight of evidence; or where the issue of a judgment n.o.v. is being tried. Statutory requirements are rigidly followed except in rare cases of unusual circumstances.

Public matters of an emergency nature will normally take precedence over all other matters. In such a situation, all members of the court will hear the matter, rather than only the single justice hearing the case and reporting to the other members.

The normal work week is from Monday through Friday; and sometimes Saturdays and Sundays if the need arises. The court has a set routine for its week. On Monday the justices meet for consideration of the "work basket," the Court's internal name for the Motion Calendar. Also taken up at this time are recommendations for disposition of rehearings, matters pertaining to the Bar, reports on applications to assume original jurisdiction, and the calling of the back list of cases in which justices have passed their votes in expression of their opinions in certain cases. If a justice intends to make a recommendation on a rehearing case on Monday, he gives notice to the Marshall on the preceding Tuesday, along with a citation to the Oklahoma Bar Journal where his opinion can be found. The Marshall then conveys this information to the other justices. Likewise, if a justice who has been assigned a case of original jurisdiction wishes to bring the case before the other members on Monday, he sends a note to the other justices, along with a copy of the briefs.

On Tuesday, sessions in open court are held. On that day the court's opinions are promulgated, as are orders in reference to motions. Oral arguments are heard, and later in the day, applications to assume original jurisdiction are heard. This is usually the day when the opinions are announced. But on emergency matters, or matters of public importance, opinions may be promulgated on other days. If a case is to be argued on Tuesday, briefs are distributed to the justices on the preceding Friday,

¹⁷ OKLA. CONST. ART. 7, § 5.

¹⁸ OKLA. CONST. ART. 7, § 3.

¹⁹ 12 OKLA. STAT. §§ 956-957. By far the most common method in Oklahoma is by appealing on case-made. This is expensive, however, and appeal on the original record is gaining more favor with appellants.

so that the justices may become familiar with the case over the week-end.

The court room is an austere and impressive room, with large oil portraits of the original five justices hanging on the walls. Permanent wooden benches, much like those found in churches, are provided for spectators. Because of the technical nature of the sessions, however, spectator attendance is sparse. Protocol is observed in the seating arrangement of the justices. The members all sit behind one long mahogany bench. Behind this are nine high portals, from which hang heavy drapes. Each justice enters through his own portal directly behind his seat. The Chief Justice occupies the center chair, flanked by the Vice Chief Justice on his right and the senior justice on his left. The next senior member is to the right of the Vice Chief Justice, the next senior member to the left of the senior member, and so on. Protocol and seniority are observed not only in the court room, but in other matters as well.

After the sessions in open court are held, the justices retire to their conference room, called the Robing Room. This is an ante room off the court room and is where the judicial robes are kept. It contains a spartan-like wooden table and nine arm chairs. Seating here is also predetermined. This is the room where most of the conferences, discussions and voting takes place. From this small room come important decisions which weigh heavily upon the Oklahoma scales of justice.

Wednesday and Thursday are "desk days." The justices individually consider other justices' opinions, do research, and write their own opinions. Wednesday is Circularization Day. If a justice has an opinion ready to circularize, his secretary will take a copy of it, along with a copy of the briefs, to each of the other justices. Thursday, the Chief Justice's secretary will distribute a typewritten list of all the cases that the justices have circulated the previous day for consideration on Friday of the following week.

On Friday, the court hears the Merits Assignment. The members consider the opinions the various justices have written, and a vote is taken. The matters considered are both original and appellate. The voting is done in a particular order. First, the author of the opinion gives his discussion and vote, then the next senior member, and so on up through the Chief Justice, then down to the bottom of the seniority list and on up to the member just below the author of the opinion in seniority. Usually, remarks are confined to each justice's turn, but sometimes a justice may have a question after his turn has passed, or wish to bring up another point prompted by another justice's discussion, and this is usually permitted. During this session, one or more of the justices may pass his vote on a particular case, and that case is put on the back list. Ordinarily, a justice may pass his vote for only two weeks. This period may be extended by the Chief Justice if the passing justice needs more time to write a dissenting opinion. Often the justice presenting his opinion at this session may have a majority concurring. One justice may pass his vote, write a dissenting opinion, and when the back list is called on a Monday, the majority may come over to the side of the dissenting opinion, thus making it the majority opinion.

The Chief Justice assigns the cases as they reach the court. Each case is assigned to a justice who is not from the particular district from which the case arose. However, if the assigned justice writes an opinion, which in the opinion of the justice from that district is clearly erroneous, and this justice clearly demonstrates from his knowledge of the situation in that district that the opinion is erroneous, then it is proper for the Chief Justice to re-assign the case to the justice representing the district in which the case arose.

Unlike the United States Supreme Court, the Oklahoma Supreme Court has no term of court. In effect, it is in session the year round. Usually, the justices take a recess around the last week in July until Labor Day, a day or two for Thanksgiving, and three or four days for the Christmas holidays. Each justice must keep the Chief Justice advised of his current telephone number and address during a recess in case an emergency session must be called. The terms of the Oklahoma Constitution impliedly give direction that the court may set up its own practical internal procedure.

Also unlike the United States Supreme Court, the members of the Oklahoma Supreme Court do not vote on a case until a proposed opinion has been written. The justice who has been assigned the case writes his proposed opinion and circulates this, together with copies of the briefs, to the other justices on Wednesday, which is Circularization Day, for consideration on Friday of the following week.

The justice who has been assigned the case is responsible for the research. Ordinarily he is the only one who will research the case, unless another justice writes a dissenting opinion, or the case is re-assigned for some reason. To help him, each justice has a secretary and a legal assistant selected by him; the appointment of the legal assistant must be with the approval of the Court. The qualifications of the legal assistant are the same as those for a district judge: he must have had at least four years experience as a licensed attorney or judge of a court of record or a combination of both.²⁰ When a justice has completed all his assigned cases, he sends word to the Marshall to ask the Chief Justice to assign him some more cases to work on.

The justice to whom the case is assigned can use any method of getting the opinion mechanically written that he wants. He may write it, his legal assistant may write it, or they may write it together. At some stage, a semi-final draft is typed, triple spaced, on yellow paper. Corrections are made by the justice and his legal assistant, or just by the justice. Then the justice's secretary types the final draft, with enough copies to be circularized to the other justices.

Other personnel who assist the Court are the Marshall, who is appointed by the Chief Justice; the Clerk of the Court, who is elected by the people; the Supreme Court Reporter, who writes the head notes for cases appearing in the Oklahoma Bar Journal; the Account Clerk, who is also the paymaster for the judges and court reporters of Oklahoma, of both the superior courts and the district courts, and for the

²⁰ OKLA. CONST. ART. 7, § 9; 74 OKLA. STAT. § 275 (1961).